

COMPLAINT 2002 - No. 2
James West, Respondent

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

October 25, 2002

I. Nature of the Complaint

The complaint makes the following five allegations against Senator Jim West

1. Senator West violated the law by co-mingling legislative and campaign business by using the same Post Office Box, paid for at state expense, for his legislative district office and his re-election campaign. The complaint alleges violation of RCW 42.17.130 but that statute applies to political subdivisions. RCW 42.52.180 is the statute that applies to state officers and employees, and prohibits use of state resources in campaigns.
2. Senator West's legislative assistant is also his campaign manager and works on the election campaign on state time when he handles campaign mail at the same time he handles legislative mail. In addition, the complaint alleges the campaign office and legislative district office are located next to each other, which calls into question whether Senator West and his assistant spend state time and resources on the Senator's campaign.
3. Senator West sent a campaign mailer made to look like a legislative report, in which official photographs taken at state expense were used, and that the Senator's campaign did not pay the Secretary of the Senate for the photographs.
4. Senator West used the state seal in a campaign mailer in violation of RCW 43.04.052(2).
5. Senator West produced a campaign commercial which contained no spoken identification of the ad's sponsor or the candidate's party affiliation, in violation of RCW 42.17.510(3).

II. Determinations of Law

1. The evidence demonstrates that P.O. Box 2744 is not paid for with public resources and, therefore, the P.O. Box is not a "facility of an agency" within the meaning of the RCW 42.52.180. There is no reasonable cause to believe a violation has occurred.
2. There is no evidence that Legislative Assistant, Brian Murray, used public facilities, including his state paid time, for Senator West's campaign. It appears from the investigation that Mr. Murray was scrupulous in separating his campaign activities from his legislative duties. There is no reasonable cause to believe a violation has occurred.
3. There is no reasonable cause to believe that Senator West improperly used Senate photographs or a legislative report in his election campaign. Senator West paid for the photographs in accordance with Senate policy. In Advisory Opinion 2000 - No.2, the Board acknowledged this policy of allowing legislators and others to purchase photographs for non-legislative purposes. The duplication of a legislative report for campaign use would be a violation of RCW 42.52.180 but this mailing was not a duplication of Senator West's legislative report. It was prepared by a campaign consultant and although it is similar in some

respects to the legislative report there is no basis to conclude that the legislative report was merely copied by the campaign consultant and mailed by the campaign.

4. On two previous occasions the Board has ruled it does not have jurisdiction to enforce RCW 43.04.050(2), campaign use of the State Seal (Complaints 2000 - No. 7 and 2002 - No.

5. This statute is enforced by the Secretary of State. The Board does not have jurisdiction to enforce RCW 42.17.510. The Public Disclosure Commission enforces RCW 42.17.

5. The broad allegation in the complaint that the campaign mailer was "made to look like a legislative report" raises the issue of the use of legislative addresses and telephone numbers in campaign mailings. We found in *Marine*, Complaint 2002 - No. 5, that there was reasonable cause to believe that the respondent in that case had misused the toll-free legislative hotline number when he included it in an October campaign mailer -- the inference being that people could use the hotline number to respond to the obvious campaign overtures. Because the Board had never addressed this particular issue we imposed no penalty with this prospective ruling. The present case is distinguishable on its facts from *Marine*. Senator West included the legislative hotline number in an April mailing paid for by his campaign but in so doing he discussed legislative issues and asked for input on those issues and, at the time of the mailing, he was acting in accord with informal legal advice from the designated ethics advisers that legislative contact points could be used in campaign mailers so long as it was clear that their use was limited to legislative issues. We therefore find there is no reasonable cause to believe that Senator West violated RCW 42.52.180, which prohibits the use of public resources to assist a campaign.

However, the Board finds, prospectively, that RCW 42.52.180 does not permit, in addition to the legislative toll-free hotline number, a legislator's use of personal legislative addresses or telephone numbers in their campaign documents because of the inference that incumbent legislators running for re-election are inviting people to use these public resources for campaign purposes. A disclaimer in the document, or some indication that these public numbers and addresses should only be used for legislative purposes, would not be sufficient to satisfy the requirements of the statute.

III. Procedural History

Complaint 2002 - No. 2 was received by Board counsel on July 25, 2002. The Complaint was transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because it alleged a violation of RCW 42.52.180 by a legislator. An investigation was conducted pursuant to RCW 42.52.420. The results of the investigation were submitted to the Board on October 3, 2002, and discussed by the Board at its October 10, 2002 meeting.

IV. Determination of Allegations of Fact

Post Office Box

Senator West uses Post Office Box 2744, Spokane, WA. 99220, for legislative, campaign and personal mail. Senator West pays for the box with campaign funds; the box is not rented at state expense. Senator West has used this box for ten years or more.

Legislative Aide

Brian Murray is Senator West's full time legislative assistant. Brian Murray works in Olympia during the legislative session and in Senator West's district office in Spokane when the legislature is not in session.

Mr. Murray and Senator West have access to P.O. Box 2744. It is usually Brian Murray who empties mail out of the box and when he collects the mail he sorts the legislative mail from campaign and personal mail at the post office. Campaign mail is then delivered to the campaign office. Mr. Murray stated that he does these tasks prior to commencing his legislative duties at the legislative district office at 8:00 a.m. When the legislature is not in session, Mr. Murray's regular hours are 8:00 to 5:00, Monday through Friday. Mr. Murray provided copies of his Senate Attendance Rosters for March through June 2002. Senate employees are required to check off the days worked on those rosters and submit them to the Secretary of the Senate. Mr. Murray's rosters indicate that he worked for the Senate Monday through Friday during the March 2002 through June 2002 period.

Brian Murray was listed as the contact person for a campaign kickoff breakfast in a mailing regarding the breakfast. P.O. Box 2744 was the contact address. (509) 994-1406 was the contact telephone number; this number is not the number for the legislative district office.

Mr. Murray is the treasurer for Senator West's campaign, a position he fills on a volunteer basis. Mr. Murray stated that he performs this campaign work during his personal time, during evenings and on weekends. As the campaign treasurer, he maintains the campaign checking account on his home computer, and is also responsible for filing disclosure reports with the Public Disclosure Commission (PDC).

The campaign has a full-time campaign manager who has held that post since April, 2002. The campaign manager stated that Mr. Murray performs his campaign related business - such as writing checks and maintaining the campaign's checking account - outside of the 8 to 5, Monday through Friday time frame. The campaign manager stated that the checking account software is not contained on the campaign office computers and that Mr. Murray goes to the campaign office when the campaign needs to write checks to pay for expenses.

The deputy campaign manager also stated that Mr. Murray does not work in the campaign office between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

PDC reports are prepared by a campaign volunteer and the volunteer stated that Mr. Murray reviews and signs the reports at the home of the volunteer after 5:00 p.m.

No facts were discovered which would suggest that Mr. Murray had performed campaign work using public resources.

Mailing

In April, 2002, Senator West sent a mailing to approximately 8,000 people who had recently been included through redistricting in the new boundaries of the 6th Legislative District. The mailing was paid for by his campaign. The campaign paid a consultant to draft the mailing, buy a list of addresses from a list service, and prepare the mailing. Senate policy does not allow Senators to mail at state expense to voters who will soon be, but are not currently, residents of the Senator's legislative district.

The mailing contained photographs of Senator West that had been taken by the Senate photographer.

Senator West has a receipt showing that he paid the Senate photographer for the photographs. The Senate Policy and Personnel Reference manual, page 51, states that members who wish to use Senate photos for other than official legislative use must purchase them from the Secretary of the Senate.

The text of the mailing does not mention that Senator West is up for reelection. However, the mailing contains a reference to Senator West's campaign committee and campaign website. The mailing contains information about Senator West and his legislative service, the 6th Legislative District and Washington State, and an issue survey in which the Senator solicited recipients' views on various issues. The mailing contains the following contact information for Senator West: legislative office addresses and telephone numbers in both Olympia and Spokane, legislative office e-mail, and toll-free legislative hotline telephone number.

IV. Relevant Statute and Previous Board Guidance

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting a campaign for election. For purposes of this complaint, the pertinent portion of the statute provides as follows:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationary, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

In the Reasonable Cause Determination and Order in Complaint 2001 - No. 5 (*Marine*, dated June 6, 2002), the Board found there was reasonable cause to believe this statute had been violated when the legislative hotline number had been used as a contact point for recipients of a campaign mailing. The Board found this issue presented a legal question of first impression and, accordingly, the Board declined to impose a penalty and applied the prohibition against such use prospectively.

In August of 2002, the Board advised its counsel and the designated ethics advisers that their future advice to legislators on this issue should include a warning that an incumbent's campaign mailing should also avoid using the legislator's legislative phone numbers and addresses as contact points. Informal legal advice to that point had been to the effect that such numbers and addresses could be used provided it was clear in the campaign mailing that such contacts were for legislative business only. On August 8, 2002, attorneys sent an e-mail to the legislators advising them of the Board's advice that no legislative contact information should be used in campaign materials and "that we had erred in our advice."

V. Conclusion and Order

1. Alleged violations of RCW 42.17.510 and RCW 43.04.050(2) are dismissed for lack of jurisdiction.
2. There is no reasonable cause to believe that there has been a violation of RCW 42.52.180 and all remaining allegations are dismissed.

3. Prospectively, RCW 42.52.180 prohibits incumbent legislators from using their legislative addresses and phone numbers as contact points for recipients of campaign mailings or other campaign documents. This prohibition is in addition to the decision in *Marine* which addressed the legislative hotline number and regardless of whether the campaign mailing or document indicates or makes clear that such contact points may be used only for legislative business.

In addition, the Board encourages future complainants to be as thorough as possible when they file a complaint and swear to facts which they believe to be true and correct. The sworn allegation that the state paid for the Post Office box in this case was not true. The sworn allegation that Senator West did not pay for the photographs used in the mailing was not true and could have been easily verified by the complainants with a request to the Senate for this public record.

James A. Andersen, Chair